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7 PRECISELY SOFTWARE
8 INCORPORATED,
9 Plaintiff,
10 v.
11 LOQATE INC.,
12 Defendant.
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Case No. 22-cv-00552-BLF

**ORDER DENYING MOTION TO
DISMISS**

[Re: ECF No. 34]

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13 This breach of contract action involves an alleged overpayment on a contract for which
14 Defendant payee has declined to reimburse. Plaintiff Precisely Software Incorporated (“Plaintiff”)
15 asserts two claims against Defendant Loqate Inc. (“Defendant”) for breach of contract and, in the
16 alternative, unjust enrichment. First Amended Compl. (“FAC”), ECF No. 31. Defendant has
17 moved to dismiss both claims under Federal Rule of Civil Procedure 12(b)(6) (“Motion”). Def.
18 Mot. Dismiss FAC, ECF No. 34.

19 For the reasons set forth below, the Court DENIES Defendant’s Motion.

20 **I. BACKGROUND**

21 In 2012, Plaintiff’s predecessor, Pitney Bowes Software Inc. (“Pitney Bowes”), entered
22 into a licensing agreement (the “Original Agreement”) in which Defendant granted Pitney Bowes
23 a license to integrate Defendant’s software and data into Pitney Bowes’ products. FAC ¶¶ 10-11.
24 On March 30, 2018, Pitney Bowes and Defendant amended the payment schedule for the Original
25 Agreement by replacing the previous schedule with “Addendum #3” (collectively with the
26 Original Agreement, the “Contract”), which reflected a “new commercial framework” for Pitney
27 Bowes’ continued licensing of Defendant’s software and data. FAC ¶¶ 13-15. Pursuant to Section
28 II of Addendum #3, Pitney Bowes had the option to either license the data to its customers on a

1 semi-unlimited “fixed fee” basis or an on-demand “per transaction fee” basis. FAC ¶ 17.

2 For its customer Kering Italia S.P.A. (“Kering”), Pitney Bowes allegedly opted to license
3 Defendant’s data on the fixed-fee basis, which involved an annual fee and was subject to an
4 annual transaction cap on Kering’s use of the data. *Id.* ¶ 18. Pitney Bowes paid the annual
5 \$120,000 fee to Defendant in 2019 and 2020 (*id.* ¶¶ 20-21), but it also mistakenly paid “per-
6 transaction” fees to Defendant for Kering’s transactions for the same period, effectively resulting
7 in double payments under both the “fixed-fee” and “per-transaction fee” bases. *Id.* ¶¶ 18-19.

8 On April 1, 2021, Pitney Bowes assigned its interests in and rights and obligations under
9 the Original Agreement and Addendum #3 to the Plaintiff via an Assignment and Assumption
10 Agreement with Defendant’s consent. *Id.* ¶ 24. Around that time, Plaintiff discovered the
11 reporting error and unsuccessfully attempted to resolve the dispute with Defendant. *Id.* ¶¶ 25-26.

12 **II. LEGAL STANDARD**

13 “A motion to dismiss under Federal Rule of Civil Procedure 12(b)(6) for failure to state a
14 claim upon which relief can be granted ‘tests the legal sufficiency of a claim.’” *Conservation*
15 *Force v. Salazar*, 646 F.3d 1240, 1241–42 (9th Cir. 2011) (quoting *Navarro v. Block*, 250 F.3d
16 729, 732 (9th Cir. 2001)). When determining whether a claim has been stated, the Court accepts
17 as true all well-pled factual allegations and construes them in the light most favorable to the
18 plaintiff. *Reese v. BP Exploration (Alaska) Inc.*, 643 F.3d 681, 690 (9th Cir. 2011). However, the
19 Court need not “accept as true allegations that contradict matters properly subject to judicial
20 notice” or “allegations that are merely conclusory, unwarranted deductions of fact, or
21 unreasonable inferences.” *In re Gilead Scis. Sec. Litig.*, 536 F.3d 1049, 1055 (9th Cir. 2008)
22 (internal quotation marks and citations omitted). While a complaint need not contain detailed
23 factual allegations, it “must contain sufficient factual matter, accepted as true, to ‘state a claim to
24 relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl.*
25 *Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). A claim is facially plausible when it “allows the
26 court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Id.*

27 **III. DISCUSSION**

28 Plaintiff asserts a breach of contract against Defendant for refusing to refund the excess

1 “per-transaction” fees that Plaintiff’s predecessor paid for licensing Defendant’s data. FAC ¶ 30.
2 In the alternative, Plaintiff also brings an equitable claim for quasi-contract relief and unjust
3 enrichment to the extent the Contract does not cover reimbursement of overpayment. *Id.* ¶ 33-36.

4 **A. Breach of Contract**

5 The elements for a breach of contract claim in California are: “(1) the contract, (2)
6 plaintiff’s performance or excuse for nonperformance, (3) defendant’s breach, and (4) the resulting
7 damages to plaintiff.” *Coles v. Glaser*, 2 Cal. App. 5th 384, 391 (2016).

8 The FAC alleges—and Defendant does not dispute—that Plaintiff’s predecessor entered
9 into the Original Agreement with Defendant on May 18, 2012, as well as Addendum #3 on March
10 30, 2018, thereby satisfying the first element. FAC ¶¶ 10, 13, 28. The FAC also alleges that
11 Pitney Bowes performed its obligations under the Contract by paying the annual \$120,000 fixed-
12 fee and even paying for transactions that it had no obligations to pay, satisfying the second
13 element. *Id.* ¶¶ 18-21, 29. As to damages, the FAC specifies that, in 2019 and 2020, Pitney
14 Bowes paid Defendant an excess of \$789,599.46 in “per-transaction” fees, which was in addition
15 to the \$240,000 annual “fixed-fees” paid to Defendant for those two years. *Id.* ¶¶ 20-23.
16 Accordingly, Plaintiff has sufficiently specified money damages arising from Defendant’s alleged
17 breach, notwithstanding Defendant’s argument that Plaintiff may not be entitled to those amounts.

18 The primary issue that Defendant disputes is whether it breached the Contract. Mot. 4-6.
19 On this element, the FAC alleges that Defendant breached the Contract by “refusing to honor the
20 pricing terms set forth in Addendum #3 and refund the excess Royalties that were paid by
21 Precisely.” FAC ¶ 30. Specifically, Defendant is alleged to have accepted payments pursuant to
22 both the annual fixed-fee basis at Addendum #3, Section II(ii), and the per-transaction basis at
23 Addendum #3, Section II(iii), despite the alleged fact that “Pitney Bowes did not owe Defendant
24 any additional amounts beyond the annual Fair Cap Usage Fee that was paid.” *Id.* ¶¶ 18-19, 22.
25 At the pleading stage, this is sufficient to allege Defendant’s breach. Plaintiff is not required to
26 plead—as Defendant suggests—details unrelated to the alleged breach (e.g., the substance of the
27 software being licensed, the products that used the software, the customers’ use of Defendant’s
28 data, *see* Mot. 4-5) or more details to facts Plaintiff had already alleged (e.g., any conditions and

1 procedures for formally selecting a specific pricing model, *see* Mot. 5). At this stage, the Court
2 must accept as true all well-pled factual allegations and construe them in the light most favorable
3 to Plaintiff, *see Reese*, 643 F.3d at 690, including the allegation that Pitney Bowes elected to
4 license data only on the “fixed-fee” basis and not the “per-transaction” basis. FAC ¶ 18, 22. The
5 Court recognizes that Defendant may have strong arguments and evidence against this claim but,
6 at this early stage, the Court will allow the breach of contract claim to proceed.

7 Accordingly, the Court is satisfied that Plaintiff has sufficiently stated a claim for breach of
8 contract and DENIES Defendant’s motion to dismiss Plaintiff’s first claim.

9 **B. Unjust Enrichment**

10 In addition to its breach of contract claim, Plaintiff also asserts an equitable quasi-contract
11 unjust enrichment claim in the alternative. “When a plaintiff alleges unjust enrichment, a court
12 may construe the cause of action as a quasi-contract claim seeking restitution.” *Astiana v. Hain*
13 *Celestial Grp., Inc.*, 783 F.3d 753, 762 (9th Cir. 2015) (quoting *Rutherford Holdings, LLC v.*
14 *Plaza Del Rey*, 223 Cal. App. 4th 221 (2014)). The elements for a claim of unjust enrichment
15 under California law are “receipt of a benefit and unjust retention of the benefit at the expense of
16 another.” *Prakashpalan v. Engstrom, Lipscomb & Lack*, 223 Cal. App. 4th 1105, 1132 (2014), as
17 modified on denial of reh’g (Feb. 27, 2014).

18 Here, the FAC has alleged that Defendant received a benefit, which was the excess “per-
19 transaction” fees Pitney Bowes mistakenly made in addition to its “fixed-fee” payments. FAC ¶
20 34. Furthermore, the FAC alleges that Defendant was not owed the “per-transaction” payments
21 under the Contract, yet Defendant refused to reimburse Plaintiff for those amounts. *Id.* ¶ 25-26,
22 34-35. Accordingly, Plaintiff has alleged that Defendant is unjustly retaining those amounts. *See*
23 *Supervalu, Inc. v. Wexford Underwriting Managers, Inc.*, 175 Cal. App. 4th 64, 78 (2009), as
24 modified (June 24, 2009) (“As a general rule, equitable concepts of unjust enrichment dictate that
25 when a payment is made based upon a mistake of fact, the payor is entitled to restitution unless the
26 payee has, in reliance on the payment, materially changed its position.”).

27 Defendant suggests that Plaintiff may not pursue its equitable quasi-contract claim because
28 Plaintiff has not pled that the underlying Contract is invalid or unenforceable. Mot. 7-8.

1 However, Plaintiff has properly pled this equitable claim in the alternative, as it is entitled to do.
2 *See* Fed. R. Civ. P. 8(d)(3) (“A party may state as many separate claims or defenses as it has,
3 regardless of consistency.”); *Rojas v. Bosch Solar Energy Corp.*, 443 F. Supp. 3d 1060, 1080
4 (N.D. Cal. 2020) (noting that “this Court has held that a claim for unjust enrichment may be
5 asserted under California law, and that such a claim is not subject to dismissal at the pleading
6 stage even if duplicative of other claims”). Specifically, Plaintiff has properly pled that there are
7 no express provisions in the Contract governing the subject matter of reimbursements for
8 overpayments (FAC ¶ 33) and, therefore, there would be no adequate contractual remedy at law.
9 *See Supervalu*, 175 Cal. App. 4th at 78-79 (rejecting argument that existence of contract precludes
10 quasi-contractual relief for mistaken payment). This satisfies Plaintiff’s pleading burden, and
11 therefore, Defendant’s motion to dismiss Plaintiff’s quasi-contract claim is DENIED.

12 **IV. ORDER**

13 For the foregoing reasons, IT IS HEREBY ORDERED that Defendant’s motion to dismiss
14 is DENIED.

15 Dated: September 19, 2022

16 
17 BETH LABSON FREEMAN
18 United States District Judge

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